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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,181	10/30/2006	Christian Krummel	10191/3616	6744
26646 7590 09/03/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER TANINGCO, MARCUS H	
			ART UNIT 2884	PAPER NUMBER
			MAIL DATE 09/03/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/528,181

**Applicant(s)**

KRUMMEL ET AL.

**Examiner**

MARCUS H. TANINGCO

**Art Unit**

2884

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 10-14, 16 and 18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/808)
- Paper No(s)/Mail Date 1/21/2009
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/22/09 has been entered.

### **Response to Arguments**

Applicant's arguments, filed 6/22/2009, with respect to the rejection(s) of claim(s) 16 and 18 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of prior art cited below.

### **Claim Objections**

Claim 16 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 18.

Claim 19 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 17.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16, 10, 11, 13, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong (US 5,721,430).

With regards to claims 16 and 18, Wong discloses an IR detector for measuring of a substance in a beam path of a radiation source (Fig. 4) comprising: a first and second detector (4, 5) arranged on a first chip (30); a first and a second filter (F1, F2) arranged on a second chip, wherein the first chip and the second chip are connected to one another in a hermetically sealed fashion (column 17, lines 32-35) (*wherein the hermetically sealed fashion is the environment in which said first and second chips are connected*). Wong fails to teach a hermetic seal between the first and second chips includes a bonding web. Wong does, however, teach that dust buildup

on said detectors may result in a drop of the output signal corresponding to the spectral bands (column 17, lines 4-17). As such, providing a hermetic seal between the first and second chips including a bonding web would have been obvious to one of ordinary skill in the art at the time of the invention in order to increase the life expectancy of the detector assembly.

With regards to claim 10, Wong discloses said first and second detectors comprise a thermopile element (column, 9, lines 9-10).

With regards to claim 11, Wong discloses an absorber layer provided on said detectors (column 18, lines 4-7).

With regards to claim 13, Wong discloses a narrow bandpass filter but fails to teach a Fabry-Perot filter. Those skilled in the art appreciate that a Fabry-Perot filter is a type of narrow bandpass filter. Substituting the narrow bandpass filter taught by Wong with a Fabry-Perot filter would have been obvious since the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

With regards to claim 14, Wong discloses a third detector and a third filter (Fig. 4).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wong in view of Tomonari et al. (*Tomonari*, US 5,426,412).

With regards to claim 12, Wong teaches most aspects of the claimed invention except for said first and said second detectors are thermally decoupled from the first substrate. Tomonari teaches an infrared detecting device comprising an infrared detector (14) and a substrate (12) wherein a cavity is formed in the substrate beneath the detector (Fig. 8), thus providing a thermal decoupling between said detector and said substrate. It would have been obvious to one with

ordinary skill in the art at the time the invention was made to modify Wong with Tomonari in order to provide thermal isolation to said detectors.

#### **Allowable Subject Matter**

Claim 17 is allowed.

Claim 19 is objected to as being a substantial duplicate of claim 17.

The following is a statement of reasons for the indication of allowable subject matter:

With regards to claims 17 and 19, the reasons for allowance have been set forth in the Office Action mailed on 6/18/2008.

#### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus H. Taningco whose telephone number is (571) 272-1848. The examiner can normally be reached on M - F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Marcus H Tanningco/  
Primary Examiner, Art Unit 2884*